

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CELIA KATZ, Administratrix of the Estate of
MICHAEL KATZ,

Plaintiff(s)

- against -

ALBERT A. MUNSCH, JR.,

Defendant(s)

ANSWER

Docket No. 07 CV 6852
(CLB)
(GAY)

Defendant(s) Albert Munsch, by the undersigned answering the VERIFIED complaint of the plaintiff(s), upon information and belief, states as follows:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 1, 5, 6.

SECOND: Denies each and every allegation contained in paragraphs numbered and designated as: 7, 8, 9, 10.

THIRD: Admits each and every allegation contained in paragraphs numbered and designated as: 2, 3, 4.

ANSWERING A SECOND CAUSE OF ACTION

FOURTH: Answering paragraph 11 repeats and reiterates each and every admission and denial heretofore made to paragraphs set therein with the same force and effect as if more fully set forth herein.

FIFTH: Denies having any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered and designated as: 13.

SIXTH: Denies each and every allegation contained in paragraphs numbered and designated as: 12, 14, 15, 16.

ANSWERING A THIRD CAUSE OF ACTION

SEVENTH: Answering paragraph 17 repeats and reiterates each and every admission and denial heretofore made to paragraphs set therein with the same force and effect as if more fully set forth herein.

EIGHTH: Denies each and every allegation contained in paragraphs numbered and designated as: 18, 19, 20.

AS AND FOR AN AFFIRMATIVE DEFENSE – COMPARATIVE NEG WRONGFUL DEATH

The personal injuries and/or property damage alleged to have been sustained by the plaintiff decedent were caused entirely or in part through the culpable conduct attributable to the plaintiff decedent and the defendant seeks a dismissal or reduction in any recovery had by the plaintiff in the proportion which the culpable conduct attributable to the plaintiff decedent bears to the culpable conduct which caused the damages.

AS AND FOR AN AFFIRMATIVE DEFENSE – HELMET/PROTECTIVE GEAR

The plaintiff failed to use a helmet and/or other appropriate protective gear and the failure to do so caused the damages allegedly sustained or that if used would have mitigated the injuries alleged.

AS AND FOR AN AFFIRMATIVE DEFENSE – COLLATERAL SOURCE

The costs incurred, or paid by plaintiff(s), if any, for medical care, dental care, custodial care or rehabilitation services, loss of earning or other economic loss, in the past or future, were or will, with reasonable certainty be replaced or indemnified, in whole or in part, from a collateral source of the type described in CPLR §4545 and defendant is entitled to have any award reduced in the amount of such payments.

WHEREFORE, defendant(s) demand(s) judgment dismissing the plaintiff(s) complaint herein together with the costs and disbursements of this action.

DATED: Westbury, New York
September 06, 2007

Yours, etc.

John W. Kondulis, Esq. (JK4978)
JAMES G. BILELLO & ASSOCIATES (JB7226)
Attorneys for Defendant(s)
Albert Munsch
875 Merrick Avenue
Westbury, New York 11590
(516) 229-4312
Our File No. 07K0974
Claim No:0272815710101033 (J829)

TO:

Cozen O'Connor
Attorneys for Plaintiff(s)
Celia Katz
45 Broadway, 16th Fl.
New York, NY 10006
1-800-523-2900 x2036

Index No. 07 CV 6852

Year: 2007

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JAMES G. BILELLO & ASSOCIATES
Attorneys for the Defendant(s)
Albert Munsch
Office and Post Office Address
875 Merrick Avenue
Westbury, New York 11590
(516) 229-4312

To:

Cozen O'Connor
Attorneys for Plaintiff(s)
Celia Katz
45 Broadway, 16th Fl.
New York, NY 10006
1-800-523-2900 x2036

Due and timely service of a copy of the within _____ is hereby admitted.
Dated September 06, 2007

Attorney(s) for Albert Munsch

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK) SS.:
COUNTY OF NASSAU)

Meryl Bader, being duly sworn, deposes and says that she is over the age of 18 years, that on the 6th day of September, 2007 she served the annexed VERIFIED ANSWER upon the following named attorneys and parties:

TO:

Cozen O'Connor
Attorneys for Plaintiff(s)
Celia Katz
45 Broadway, 16th Fl.
New York, NY 10006
1-800-523-2900 x2036

by depositing true copies thereof in a post box maintained by the United States Postal authorities, enclosed in securely closed post-paid wrappers addressed to the above-named attorney(s) and party(s) listed above; that being the addresses designated by them as ascertained by deponent from the file maintained in the office of the attorneys for the Defendant(s) herein.

Meryl Bader

Sworn to before me this
6th day of September, 2007

Notary Public